

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

In Re:

BKY. NO. 04 - 44286

**Ronald Carl Lindblom and
Eloise Ann Lindblom,**

Debtors.

**NOTICE OF HEARING AND MOTION FOR AUTHORITY
TO SELL PROPERTY OF THE ESTATE FREE AND CLEAR
OF LIENS AND ENCUMBRANCES**

TO: THE HONORABLE NANCY C. DREHER, UNITED STATES BANKRUPTCY JUDGE;
THE DEBTOR, RONALD CARL LINDBLOM, ELOISE ANN LINDBLOM AND THEIR
ATTORNEY, J. RICHARD STERMER; THE UNITED STATES TRUSTEE; AND ALL
OTHER PARTIES IN INTEREST:

1. Dorraine A. Larison, the Trustee in the above case (the "Trustee"), moves the
Court for the relief requested below and gives notice of hearing.

2. The Court will hold a hearing on this Motion at 10:30 a.m., October 27, 2004,
in the United States Bankruptcy Court, Courtroom # 7 West, United States Courthouse, 300 South
Fourth Street, Minneapolis, Minnesota, 55415.

3. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. § 157 and
1334, Bankruptcy Rule 5005 and Local Rule 1070-1. This matter is a core proceeding pursuant to
28 U.S.C. § 157(b)(2)(N). The petition commencing this case as a case under Chapter 7 was filed on
August 8, 2004, (the "Petition Date"). The case is now pending in this Court.

4. This Motion arises under 11 U.S.C. § 363(f), Bankruptcy Rules 6004 and
6007. This Motion is filed under Bankruptcy Rules 6004(c), 9013 and 9014 and Local Rules 9013-

1 through 9019-1. By this Motion, the Trustee requests the entry of an order authorizing the Trustee to sell certain property of the estate described below free and clear of all pledges, security interests, liens, charges, claims and encumbrances granted, caused or suffered by or which have otherwise attached to the interest of the Debtor or his predecessors in title. The Trustee proposes to sell the property to Anything Goes Trucking, Inc., or its designee, for the sum of \$51,000.00 cash.

5. Pursuant to Local Rule 9006-1(b), any response to this Motion, must be filed and delivered not later than October 18, 2004, which is seven (7) days before the time set for the hearing or filed and served by mail not later than October 13, 2004, which is ten (10) days before the time set for the hearing. **UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.**

STATEMENT OF FACTS

6. On the Petition Date, the Debtors were the owners of an interest in certain real property (the "Property") located in Aitken County, Minnesota, legally described as follows:

The South Seven Hundred Twenty (720) feet of the Southwest Quarter of Southwest Quarter (SW1/4 of SW1/4) of Section Twenty-seven (27), Township Forty-six (46), Range Twenty-seven (27), EXCEPT that part described as follows:

Commencing at a point on the South line of said Section 27 which is 1066.3 feet due East of its Southwest corner, thence North 1 degree East 417.4 feet to the place of beginning, thence North 1 degree East 401 feet, thence East 167.5 feet to the Westerly right-of-way line of Highway 169, thence southerly 401 feet along said right-of-way line, thence West 168 feet to the place of beginning.

Commencing at the southwest corner of said SW1/4 of SW1/4, thence running East on section line 1066.29 feet to place of beginning of tract to be hereby described; thence continuing East on section line 208.71 feet, thence deflecting to the left 91° for a distance of 417.42 feet, thence West, parallel with the South line of said section a distance of 208.71 feet, thence southerly 417.42 feet to the place of beginning.

7.. The estate's interest in the Property is subject to real estate taxes due and payable for the last half of 2004 in favor of Aitken County. The balance due and owing for real estate taxes is approximately \$41.00. There is no interest or penalty due on the real estate taxes.

8. The Trustee has not employed a real estate agent to represent the Trustee in the sale of this property. Therefore, there is no real estate commission fee to be deducted from the sale proceeds of this property.

9. The Trustee has considered the income tax consequences of the sale. Based upon the information available to the Trustee, the Trustee has concluded that the sale of the Property by the Trustee will result in income tax liabilities for the estate. Based upon the information available to the Trustee, the Trustee has concluded that such tax liabilities will not exceed the proceeds and that a significant portion of the funds will be available to the estate for distribution to creditors.

10. Based upon the information available to the Trustee, the Trustee believes that a sale of the Property to Anything Goes Trucking, Inc. will result in estimated net proceeds to the estate of \$50,000.00, not including income taxes and attorney fees for this motion.

11. The Trustee believes that closing the sale is in the best interest of the estate and creditors. The Trustee believes that the closing of the sale will result in substantial dividends to the creditors of the estate.

WHEREFORE, Dorraine A. Larison, moves the Court for the entry of an order as follows:

1. Authorizing the Trustee to sell, transfer and convey pursuant to 11 U.S.C. § 363(f), the Property to Anything Goes Trucking, Inc., or its designee, for the sum of \$51,000.00 cash, and directing the Trustee to execute and deliver to Anything Goes Trucking, Inc., or its designee, a Trustee's Deed. Such Transfer of the estate's interest in the Property shall be free and clear of the following pledges, security interests, liens, charges, claims, or encumbrances granted, caused or

suffered by, or which have otherwise attached to the interest of the Debtor, or any of his predecessors in title, including, without limitation, the following:

- a. The lien, if any, of the County of Aitken, State of Minnesota, for the balance of the real estate taxes due and payable in 2004.
2. Authorizing and directing the Trustee to pay from any such sale proceeds to the Aitken County Treasurer the pro rata share of the last half of the real estate taxes due and payable in 2004.
3. Authorizing and directing the Trustee to pay from any such sale proceeds the Minnesota deed tax imposed upon the delivery of the deed to Anything Goes Trucking, Inc., or its designee.
4. Requiring the Debtors to cooperate with the Trustee in all matters relating to the sale of the Property.
5. Authorizing the Trustee to execute and deliver any related or ancillary document which may be necessary to complete the sale of the Property contemplated herein; and,
6. Granting such other and further relief as is just and equitable.

Dated this 24th day of September, 2004.

/e/ Dorraine A. Larison
Dorraine A. Larison
I.D. No. 203609
GRAY, PLANT, MOOTY,
MOOTY & BENNETT, P.A.
1010 West St. Germain
Suite 600
St. Cloud, MN 56301
(320) 252-4414
Attorneys for the Trustee

VERIFICATION

Dorraine A. Larison, the moving party named in the foregoing Notice of Hearing and Motion, declares under penalty of perjury that the foregoing is true and correct according to the best of my knowledge, information and belief.

/e/ Dorraïne A. Larison
Dorraine A. Larison

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

In Re:

BKY. NO. 04-44286

**Ronald Carl Linblom and
Eloise Ann Lindblom,**

Chapter 7

Debtors.

**MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR AUTHORITY
TO SELL PROPERTY OF THE ESTATE FREE AND CLEAR
OF LIENS AND ENCUMBRANCES**

The Trustee submits this memorandum of law in support of her motion to sell the estate's interest in certain real property located in Aitken County, Minnesota (the "Property"). The relevant factual background for the motion is set forth in detail in the motion itself.

ARGUMENT

Section 363(f) of the Bankruptcy Code provides as follows:

- (f) The Trustee may sell property under subsection (b) or (c) of this section free and clear of any interest in such property of any entity other than the state, only if—
- (1) applicable nonbankruptcy law permits sale of such property free and clear of such interest;
 - (2) such entity consents;
 - (3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;
 - (4) such interest is in bona fide dispute; or
 - (5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

11 U.S.C. § 363(f) (1998). Section 363(f) is written in the disjunctive; therefore, "the sale free of the interest concerned can occur if any one of the conditions of section 363(f) have been met." 2 Collier

on Bankruptcy, ¶ 363.07 (15th Ed.); In re Red Oak Farms, Inc., 36 B.R. 856, 858 (Bky. W.D. Mo. 1984).

In this case it is clear that the Trustee can satisfy the conditions specified in section 363(f) for each lien or encumbrance proposed to be extinguished by the court, should the motion be granted. A review of each lien or encumbrance will establish that the Trustee's motion to sell the Property free and clear of liens should be granted by the Court.

All of the interests in the Property fall within the provisions of section 363(f). The real estate tax liens outlined in the Trustee's motion fall within the provisions of 363(f)(3) because the price at which the Property is to be sold is greater than the value of all of the liens combined and all lien holders will be paid in full. Therefore, there is no basis for these lien holders to object to the sale.

CONCLUSION

As the verified motion of the Trustee indicates, the sale of this property free and clear of liens would be in the best interest of creditors. The interests in the property all fall within the provisions of section 363(f) which would allow the sale. Therefore, the Court should grant the Trustee's motion.

Dated this 24th day of September, 2004.

/e/ Dorraine A. Larison
Dorraine A. Larison
I.D. No. 203609
GRAY, PLANT, MOOTY,
MOOTY, & BENNETT, P.A.
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Suite 600
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(320) 252-4414
Attorneys for the Trustee

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

Chapter 7
Bky. Case No. 04-44286

Ronald Carl Lindblom and,
Eloise Ann Lindblom

UNSWORN CERTIFICATE OF SERVICE

Debtor.

I, Joy Remer, declare under penalty of perjury that on September 21, 2004, I mailed the following documents:

1. **NOTICE OF HEARING AND MOTION FOR AUTHORITY TO SELL PROPERTY OF THE ESTATE FREE AND CLEAR OF LIENS AND ENCUMBRANCES;**
2. **MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR AUTHORITY TO SELL PROPERTY OF THE ESTATE FREE AND CLEAR OF LIENS AND ENCUMBRANCES;**
3. **PROPOSED ORDER APPROVING SALE OF REAL ESTATE FREE AND CLEAR OF LIENS; AND**
4. **UNSWORN CERTIFICATE OF SERVICE.**

by first class mail postage prepaid to each entity named below at the address stated below for each entity:

SEE ATTACHED SERVICE LIST

Executed on: September 24, 2004

/e/ Joy Remer
Joy Remer
GRAY, PLANT, MOOTY,
MOOTY & BENNETT, P.A.
1010 West St.Germain, Suite #600
St. Cloud, MN 56301

SERVICE LIST
RONALD CARL LINDBLOM AND ELOISE ANN LINDBLOM
BKY. CASE 04-44286

RONALD CARL LINDBLOM
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T ROWE PRICE
PO BOX 17215
BALTIMORE MD 21297-1215

ELOISE ANN LINDBLOM
8050 50TH AVENUE SE
MAYNARD, MN 56260-8062

SEARS
PO BOX 182149
COLUMBUS OH 43218-2149

J RICHARD STERMER
PRINDLE MALAND SELLNER
PO BOX 591
MONTEVIDEO MN 56265

SAMS CLUB
PO BOX 530993
ATLANTA GA 30353-0993

MN DEPT OF REVENUE
BANKRUPTCY SECTION
PO BOX 64447
ST PAUL MN 55164

RICE MEMORIAL HOSPITAL
301 BECKER AVENUE SW
WILLMAR MN 56201

STATE OF MINNESOTA
DEPT OF MANPOWER SERVICES
390 N ROBERT ST
ST PAUL MN 55101

MENARDS
RETAIL SERVICES
DEPT 7680
CAROL STREAM IL 60116-7680

UNITED STATES ATTORNEY
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PO BOX 15028
WILMINGTON DE 19886-5028

UNITED STATES TRUSTEE
1015 US COURTHOUSE
300 S 4TH ST
MINNEAPOLIS MN 55415

MBNA AMERICA
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CHIPPEWA COUNTY SHERIFF
CHIPPEWA COUNTY COURTHOUSE
MONTEVIDEO MN 56265

JC PENNEY
PO BOX 960001
ORLANDO FL 32896-0001

WILLMAR SURGERY CTR
PO BOX 773
WILLMAR MN 56201-0773

FLEET CREDIT CARD SERVICE
PO BOX 15368
WILMINGTON DE 19886-5368

FARMERS & MERCHANTS BANK
200 W MAPLE ST
PO BOX 397
SACRED HEART MN 56285

DISCOVER
PO BOX 30395
SALT LAKE CITY UT 84130-0395

CITIBANKCHOICE
PO BOX 6000
THE LAKES NV 89163-6000

CITIBANKCHOICE
ATTN BANKRUPTCY DEPT
PO BOX 6000
THE LAKES NV 89163-6000

CHASE GOLD VISA
PO BOX 52064
PHOENIX AZ 85072-2064

BANK ONE
PO BOX 8650
WILMINGTON DE 19899-8650

AT & T UNIVERSAL CARD
PO BOX 8029
SOUTH HACKENSACK NJ 07606-8029

AFFILIATED COMM MED CNTRS
PO BOX 1318
WILLMAR MN 56201

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

In Re:

BKY. NO. 04-44286

**Ronald Carl Lindblom and
Eloise Ann Lindblom,**

Chapter 7

Debtors.

ORDER APPROVING SALE OF REAL ESTATE FREE AND CLEAR OF LIENS

This matter came on for hearing on October 27, 2004 on the Trustee's Motion for Authority to Sell Property of the Estate Free and Clear of Liens and Encumbrances. The Court, having reviewed the motion and having considered the evidence and matters on file herein, makes the following Order pursuant to the Federal Rules of Bankruptcy Procedure:

IT IS HEREBY ORDERED:

1. The Trustee's motion is GRANTED.
2. The Trustee is authorized to sell, transfer and convey to Anything Goes Trucking, Inc., or its designee, for the sum of \$51,000.00 cash, all of the estate's right, title and interest in and to certain real property in Aitkin County, Minnesota, legally described as follows:

The South Seven Hundred Twenty (720) feet of the Southwest Quarter of Southwest Quarter (SW1/4 of SW1/4) of Section Twenty-seven (27), Township Forty-six (46), Range Twenty-seven (27), EXCEPT that part described as follows:

Commencing at a point on the South line of said Section 27 which is 1066.3 feet due East of its Southwest corner, thence North 1 degree East 417.4 feet to the place of beginning, thence North 1 degree East 401 feet, thence East 167.5 feet to the Westerly right-of-way line of Highway 169, thence southerly 401 feet along said right-of-way line, thence West 168 feet to the place of beginning.

Commencing at the southwest corner of said SW1/4 of SW1/4, thence running East on section line 1066.29 feet to place of beginning of tract to be hereby described; thence continuing East on section line 208.71 feet, thence deflecting to the left 91° for a distance of 417.42 feet, thence West, parallel with the South line of said section a distance of 208.71 feet, thence southerly 417.42 feet to the place of beginning, (the "Property").

3. Pursuant to 11 U.S.C. § 363, the sale of the estate's interest in the Property shall be free and clear of the following pledges, security interests, liens, charges, claims, or encumbrances and other interests (collectively, the "Interest") granted, caused or suffered by, or which have otherwise attached to the interest of the Debtors, or any of their predecessors in title, which Interest shall attach to the proceeds of the sale.

4. Notwithstanding the foregoing, the Property shall remain subject to:

a. The lien, if any, of the County of Aitkin, State of Minnesota, for real estate taxes pro rated to the date of sale for 2004.

5. The Trustee is authorized and directed to pay from the sale proceeds:

a. To the Aitkin County Treasurer the second one-half of 2004 real estate taxes, pro rated to the date of closing.

e. To Itasca County Abstract Company the cost of preparing an abstract for the Property.

f. The Minnesota deed tax imposed upon the delivery of the deed to Anything Goes Trucking, Inc., or its designee.

6. The Debtors shall cooperate with the Trustee in all matters relating to the sale of the Property.

7. The Trustee is authorized to execute and deliver any related or ancillary documents which may be necessary to complete the sale of the Property contemplated herein.

Dated: _____, 2004

BY THE COURT

Judge Nancy C. Dreher
United States Bankruptcy Judge